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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,037	08/28/2002	Kenji Morimoto	MTS-3321US	6565
Allan Ratner Ratner & Prestia Suite 301 One Westlake Berwyn P O Box 980 Valley Forge, PA 19482-0980			EXAMINER SHIBRU, HELEN	
			ART UNIT 2621	PAPER NUMBER
			MAIL DATE 03/04/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/088,037

Applicant(s)

MORIMOTO ET AL.

Examiner

HELEN SHIBRU

Art Unit

2621

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 9-21, 23-26, 33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 7, 14, 15, 19-21, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 9-11, 16-18, 25-26 and 33-34 is/are rejected.
- 7) ☒ Claim(s) 12-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species 1, figure 1, corresponding to claims 1, 9-13, 16-18, 25-26, and 33-34 in the reply filed on 12/11/2008 is acknowledged.

Response to Amendment

2. The amendments filed on 06/04/2008 have been entered and made of record. Claims 1, 9-13, 16-18, 25-26, and 33-34 are pending.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 9-13, 16-18, 25-26, and 33-34 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9-11, 16-18, 25-26, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumi (US Pat. No. 6,038,094) in view of Shinohara (US Pat. No. 5,740,306) and further in view of Inazumi (US Pat. No. 6,493,362).

Regarding claim 1, Matsumi discloses a data recording apparatus comprising: inputting means of receiving a data (see abstract and fig. 1);

data converting means of converting the data which is received by said inputting means, into a recording signal (see col. 8 lines 44-52);

recording means of recording the recording signal which is converted by said data converting means, on a predetermined recording medium (see abstract, col. 10 lines 20-40 and lines 55-67);

data rate detecting means of detecting a rate of the data which is received by said inputting means (see claim 1 lines 16-20); and

controlling means of controlling a recording rate of said recording means based on the detected data rate (see claim 2, col. 10 lines 2-19, col. 16 lines 23-50).

Claim 1 differs from Matsumi in that the claim further requires data rate detecting means of detecting a data rate of the received bit stream by counting input packets received by said inputting means.

In the same field of endeavor Shinohara discloses the rate identifying circuit extracts transport packets of the program to be recorded from the transport packets received through the input terminal (col. 40 lines 19-31). Shinohara further discloses the identifying circuit detects rates of respective data. Special playback data recording area can be used effectively and the playback data rate for the fast playback can be maximized (col. 56 lines 23-55). Shinohara further discloses n lines of sync block data may be generated using m transport packets where m and n are positive numbers (see col. 54 lines 60-67). Shinohara further discloses the group of sync block formats can be separated from each other by using sync block number (col. 34 lines 19-42). Therefore in light of the teaching in Shinohara it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Matsumi by counting input packets in order to monitor a packet flow.

Claim 1 further differs from the Matsumi and Shinohara in that the claim further requires detecting data rate by counting a number of packets over a predetermined time, the predetermined time being a time taken by the said recording means to record data on said predetermined recording medium in a predetermined format.

In the same field of endeavor Inazumi discloses detecting data rate by counting a number of packets over a predetermined time, the predetermined time being a time taken by the said recording means to record data on said predetermined recording medium in a predetermined format (see figure 3, col. 3 lines 52-37, and col. 7 line 61-col. 8 line 3, col. 9 line 35-col. 10 line 58, col. 11 line 33-45, and claim 1). Therefore in light of the teaching in Inazumi it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above proposed combination by counting packets in a predetermined time and record data in the predetermined time in order to produce the recorded data with high precision.

Regarding claim 9, Shinohara discloses the said controlling means compares a predetermined reference value with the data rate which is detected by said data rate detecting means, to control the recording rate of said recording means (see col. 56 line 61-col. 57 line 14).

Regarding claim 10, Shinohara discloses the predetermined reference value is a value which is determined in accordance with a rate of a head data of the recording signal which is to be recorded by said recording means, in each recording time period (see col. 17 line 66-col. 18 line 21).

Regarding claim 11, Shinohara discloses there are at least two kinds of recording modes in which said recording means records the recording signal, and at intervals of a predetermined

time period, when a rate of a data corresponding to the recording signal which is to be recorded by said recording means exceeds even once the predetermined reference value, said controlling means controls the recording rate of said recording means so that all recording signals during the predetermined time period are recorded in a recording mode in which a data of a rate exceeding the predetermined reference value can be recorded (see col. 13 lines 21-36, col. 17 lines 54-65 and col. 30 line 63-col. 31 line 14).

Regarding claim 16, Shinohara discloses recording means records also the recording rate on the recording medium (see abstract and claim 1 in Shinohara).

Regarding claim 17, Shinohara discloses A data reproducing apparatus comprising at least reproducing means of, by using the recording rate which is recorded on the recording medium by a data recording apparatus according to claim 16, reproducing the recording signal which is recorded on the recording medium (see abstract and cols. 2-3).

Claim 18 is rejected for the same reason as discussed in claim 1 above.

Claims 25-26 are rejected for the same reasons as discussed in claims 16-17 above respectively.

Claims 33-34 are rejected for the same reasons as discussed in claims 1 and 3 above.

Allowable Subject Matter

6. Claims 12-13 would be allowable if rewritten to overcome the below objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 12, the Prior Art fails to teach or suggest the apparatus of claim 1 including recording means record signal at intervals of a predetermined time period, until a rate of a data corresponding to the recording signal which is to be recorded by said recording means exceeds the predetermined reference value, said controlling means controls the recording rate of said recording means so that the recording signal is recorded in a recording mode corresponding to a rate which does not exceed the predetermined reference value, and, after the rate of the data corresponding to the recording signal which is to be recorded by said recording means exceeds the predetermined reference value, controls the recording rate of said recording means so that the recording signal is recorded in a recording mode corresponding to a higher rate which exceeds the predetermined reference value.

Regarding claim 13, claim 13 is objected as being dependent upon the objected claim 12.

Claim Objections

7. Claims 9, 10-13, 16-17, and 25-26 are objected to because of the following informalities: These claims depend on the non elected claims. Appropriate correction is required.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELEN SHIBRU whose telephone number is (571)272-7329. The examiner can normally be reached on M-F, 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THAI Q. TRAN can be reached on (571) 272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HELEN SHIBRU/

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Examiner, Art Unit 2621

February 28, 2009

/Thai Tran/

Supervisory Patent Examiner, Art Unit 2621